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Attorneys for Director of Labor
and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the matter of)	CASE NO. OSH 2004-3
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A;
Complainant,)	APPROVAL AND ORDER
)	
vs.)	
)	
CONSTRUCTION HAWAII.COM LLC,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations
("Director") and Respondent CONSTRUCTION HAWAII.COM LLC
("Respondent") having reached a full and complete settlement of
the above-captioned contested case presently pending before the
Hawaii Labor Relations Board ("Board") stipulate and agree as
follows:

On or about August 8, 2003, the Director, by and through the State of Hawaii Occupational Safety and Health Division ("HIOSH"), initiated an accident investigation of the Respondent's workplace located at the Kukui Grove Executive Center, 4370 Kukui Grove Street, Lihue, Hawaii, 96766. The investigation was initiated after it was reported to HIOSH that a worker was fatally injured after he fell from the roof of the building. The investigation determined that two of the Respondent's workers did not tie-off their safety harnesses to the horizontal lifeline while they were performing roofing work, and therefore, were exposed to fall hazards while working on the roof. The employee who fell, the Respondent's foreman, was transported to Wilcox Memorial Hospital where he was pronounced dead on arrival. Toxicology examination of the Respondent's foreman's blood revealed the presence of methamphetamine and its metabolite, amphetamine.

As a consequence of said investigation, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on February 5, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$3,000.00. See Exhibit A.

Respondent timely contested the Citation on February 23, 2004.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a worksite at the Kukui Grove Executive Center, 4370 Kukui Grove Street, Lihue, Hawaii, 96766.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation is amended as follows:

a. Citation 1, item 1, alleging a serious violation of 29 CFR 1926.501(b)(10) shall remain;

b. Citation 1, item 2, alleging a serious violation of 29 CFR 1926.502(d)(8) shall be dismissed with prejudice; and

c. Citation 2, item 1, alleging an other-than-serious violation of 29 CFR 1926.503(b)(1) shall be dismissed with prejudice.

5. The Director reduces the aggregate penalty from \$3,000.00 to \$1,500.00, which shall be paid in full to the Director of Budget and Finance within five (5) business days of the approval and filing of this Agreement by the Hawaii Labor Relations Board.

6. Except for the stipulated amendments described above, the Citation and Notification of Penalty of February 5, 2004, is confirmed in all other respects, and upon approval by the Labor Board, this Agreement and the Citation and Notification of Penalty of February 5, 2004, as amended, shall become a final order of the Director.

7. The Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation and Notification of Penalty of February 5, 2004, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. The Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and its related rules.

9. The Respondent withdraws its notice of contest dated February 23, 2004.

10. By entering into this Agreement, the Respondent does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Hawaii Occupational Safety and Health Law.

11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by the Respondent that may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

12. The Hawaii Labor Relations Board may enter an order in accordance with the foregoing stipulations.

DATED: Honolulu, Hawaii,

7/21/04.

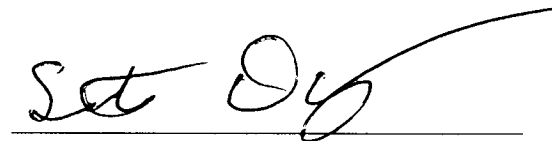
APPROVED AS TO FORM:

CONSTRUCTION HAWAII.COM LLC



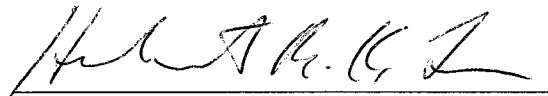
DANIEL G. MUELLER

Attorney for Respondent
CONSTRUCTION HAWAII.COM



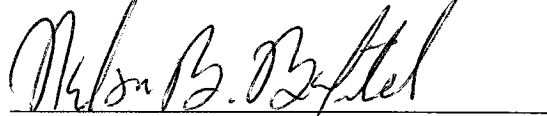
By: SCOTT DOTY
It's: FOUNDER

APPROVED AS TO FORM:



HERBERT B.K. LAU
Deputy Attorney General

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

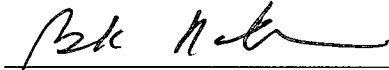


NELSON B. BEFTEL
Director of Labor

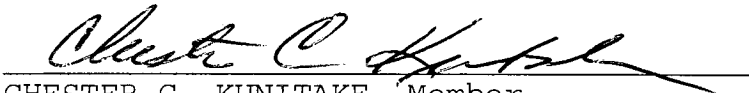
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 105

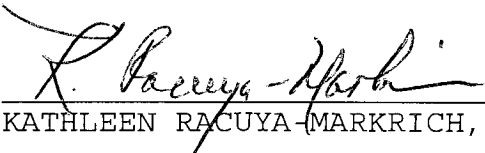
DATED: August 4, 2004



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7002 2030 0003 4049 1423

Citation and Notification of Penalty

To:
Construction Hawaii.Com LLC
and its successors
P O Box 1882
Kapaa, HI 96746

Inspection Site:
4370 Kukui Grove St
Lihue, HI 96766

Inspection Number: 306261967 Ray Mishima
Inspection Date(s): 08/08/2003- 12/30/2003
Issuance Date: 02/05/2004
OSHC ID: Y5214
Optional Report No.: 09503

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
830 PUNCHBOWL STREET
HONOLULU, HI 96813

Construction Hawaii.Com LLC
P O Box 1882
Kapaa, HI 96746

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 02/05/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Construction Hawaii.Com LLC
Inspection Site: 4370 Kukui Grove St, Lihue, HI 96766

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.1, HAR] was violated because:

ABATEMENT DOCUMENTATION REQUIRED

Two employees were witnessed on the edge of a 4:12 low-slope roof, 40 feet to the next lower level not tied off to the horizontal lifeline, thus exposing the workers to a fall hazard.

29 CFR 1926.501(b)(10) states "Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs with unprotected side and edges 6 feet (1.8 m) or more above the lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix M of this part), the use of safety monitoring system alone [i.e. without the warning line system] is permitted."

Location: Jobsite

Date By Which Violation Must be Abated:
Penalty:

02/09/2004
\$ 1,500.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Construction Hawaii.Com LLC
Inspection Site: 4370 Kukui Grove St, Lihue, HI 96766

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.502(d)(8) [Refer to chapter 12-121.1, HAR] was violated because:

ABATEMENT DOCUMENTATION REQUIRED

A lifeline was not able to support two workers. The 5/8 inch nylon rope did not have a safety factor of at least two, exposing the workers to a fall hazard.

29 CFR 1926.502(d)(8) states "Horizontal lifelines shall be designed, installed, and used, under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of at least two."

Location: Jobsite

Date By Which Violation Must be Abated:
Penalty:

02/09/2004
\$ 1,500.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Construction Hawaii.Com LLC
Inspection Site: 4370 Kukui Grove St, Lihue, HI 96766

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.503(b)(1) [Refer to chapter 12-121.1, HAR] was violated because:

There was no written certification available to show that the employees were trained in fall protection.

29 CFR 1926.503(b)(1) states "The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

03/09/2004
\$ 0.00

A handwritten signature in black ink, appearing to read "Nelson B. Befitel".

NELSON B. BEFTEL
DIRECTOR

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Construction Hawaii.Com LLC
Inspection Site: 4370 Kukui Grove St, Lihue, HI 96766
Issuance Date: 02/05/2004

Summary of Penalties for Inspection Number 306261967

Citation 1, Serious	= \$	3,000.00
Citation 2, Other	= \$	0.00
TOTAL PENALTIES	= \$	3,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.